

ACT 175, SLH 2009

PART II

PROCUREMENT PREFERENCES

SECTION 3. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§103D- Agricultural products subject to this chapter.

The following agricultural products shall be subject to this chapter:

(1) Fresh meats and produce; and

(2) Animals and plants.

Except for the exemptions under section 103D-102(b), no exemptions under this chapter shall apply to this section."

SECTION 4. Chapter 103D, Hawaii Revised Statutes, is amended by adding a new section to part X to be appropriately designated and to read as follows:

"§103D- Failure to adequately verify, deliver, or supply Hawaii products. If the administrator or procurement officer who has awarded a contract under section 103D-1002, finds that in the performance of that contract there has been a failure to comply with section 103D-1002, the contract shall be voidable



1 and the findings shall be referred for debarment or suspension
2 proceedings under section 103D-702."

3 SECTION 5. Section 103D-1001, Hawaii Revised Statutes, is
4 amended as follows:

5 1. By adding the definition of "Hawaii input" to be
6 appropriately inserted and to read:

7 "Hawaii input" means the part of the cost of a product that
8 is attributable to production, manufacturing, or other expenses
9 arising within the state. "Hawaii input" includes but is not
10 limited to:

11 (1) The cost to mine, excavate, produce, manufacture,
12 raise, or grow the materials in Hawaii;

13 (2) The added value of that portion of the cost of
14 imported materials that is incurred after landing in
15 Hawaii, including but not limited to other articles,
16 materials, and supplies, added to the imported
17 materials;

18 (3) The cost of labor, variable overhead, utilities, and
19 services, incurred in the production and manufacturing
20 of materials or products in Hawaii; and



1 (4) Fixed overhead cost and amortization or depreciation
2 cost, if any, for buildings, tools, and equipment,
3 situated and located in Hawaii and used in the
4 production or manufacturing of a product."

5 2. By amending the definition of "Hawaii products to read:

6 "Hawaii products" means products that are mined,
7 excavated, produced, manufactured, raised, or grown in the
8 [State] state and where the [input constitutes no less than
9 twenty five] cost of the Hawaii input towards the product
10 exceeds fifty per cent of the [manufactured] total cost[+] of
11 the product; provided that:

12 ~~[(1) Where the value of the input constitutes twenty five~~
13 ~~per cent or more, but less than fifty per cent, of the~~
14 ~~manufactured cost, the product shall be classified as~~
15 ~~class I,~~

16 ~~+(2)]~~ (1) Where the value of the input [constitutes]
17 exceeds fifty per cent ~~[or more, but less than~~
18 ~~seventy five per cent,]~~ of the [manufactured] total
19 cost, the product shall be classified as class ~~[II,]~~
20 I; and



1 ~~[(3) Where the value of the input constitutes seventy five~~
2 ~~per cent or more of the manufactured cost, the product~~
3 ~~shall be classified as class III.]~~

4 (2) Where any agricultural, aquacultural, horticultural,
5 silvicultural, floricultural, or livestock product is
6 raised, grown, or harvested in the state, the product
7 shall be classified as class II."

8 SECTION 6. Section 103D-1002, Hawaii Revised Statutes, is
9 amended to read as follows:

10 "\$103D-1002 Hawaii products. (a) A purchasing agency
11 shall review all specifications in a bid or proposal for
12 purchase ~~[from the]~~ of Hawaii products ~~[list]~~ where these
13 products are available ~~[, provided that the products:~~

14 ~~(1) Meet the minimum specifications and the selling price~~
15 ~~f.o.b. jobsite,~~

16 ~~(2) Unloaded including applicable general excise tax and~~
17 ~~use tax does not exceed the lowest delivered price in~~
18 ~~Hawaii f.o.b. jobsite, and~~

19 ~~(3) Unloaded, including applicable general excise tax and~~
20 ~~use tax, does not exceed the lowest delivered price of~~
21 ~~a similar non Hawaii product by more than.~~



1 ~~(A) Three per cent where class I Hawaii products are~~
2 ~~involved;~~

3 ~~(B) Five per cent where class II Hawaii products are~~
4 ~~involved; or~~

5 ~~(C) Ten per cent where class III Hawaii products are~~
6 ~~involved].~~

7 (b) All invitations for bids and requests for proposals
8 shall ~~[include]~~:

9 (1) Include a description of the products that are listed
10 in the Hawaii products list established pursuant to
11 this section, ~~[and their established classes,]~~ which
12 may be used to complete the scope of work specified in
13 the invitation for bids or request for proposals[
14 ~~where the products are]~~; or

15 (2) Allow as part of the offer, self-certification that
16 the Hawaii products qualify for preference;
17 provided that the offer may be evaluated along with any other
18 published criteria in the solicitation, including but not
19 limited to considerations such as specific nutritional content
20 or its equivalent, timing of delivery, quality or freshness, and
21 past performance, if applicable.



1 All Hawaii products in any bid or request for proposal
2 shall be made available [and meet] for inspection, or additional
3 information may be requested to verify that the Hawaii product
4 meets the minimum specifications.

5 (c) All persons submitting bids or proposals to claim a
6 Hawaii products preference shall designate in their bids which
7 individual product and its price is to be supplied as a Hawaii
8 product.

9 (d) Where a bid or proposal contains both Hawaii and non-
10 Hawaii products, then for the purpose of selecting the lowest
11 bid or purchase price only, the price or bid [~~or~~] offered for a
12 Hawaii product item shall be decreased by subtracting
13 [~~therefrom: three per cent, five per cent, or~~] ten per cent for
14 [~~the~~] class I [~~, class II, or class III~~] Hawaii product items bid
15 or offered, [~~respectively.~~] or fifteen per cent for class II
16 Hawaii product items bid or offered. The lowest total bid or
17 proposal, taking the preference into consideration, shall be
18 awarded the contract unless the bid or offer provides for
19 additional award criteria. The contract amount of any contract
20 awarded, however, shall be the amount of the bid or price
21 offered, exclusive of the preferences.



1 (e) Upon receipt and approval of application for Hawaii
2 products preference, the administrator shall include within the
3 Hawaii products list, the names of producers and manufacturers
4 in the ~~[State]~~ state who are authorized to supply locally
5 manufactured soil enhancement products to state agencies under
6 subsection ~~[(h)-]~~ (k). The administrator of the state
7 procurement office shall maintain and distribute copies of the
8 list to the purchasing agencies of the various governmental
9 agencies.

10 (f) Any person not on the Hawaii products list desiring a
11 preference pursuant to this section shall certify the Hawaii
12 product when submitting a response to a solicitation; provided
13 that the person certifies under penalty of sanctions that the
14 offered Hawaii products meet the requirements for the
15 preference.

16 The procurement officer may request additional information
17 deemed necessary to qualify a product and shall have sole
18 discretion in determining qualification for the preference.

19 Any offeror whose product is deemed not qualified for the
20 preference may appeal by filing a written request for
21 reexamination of facts to the procurement officer. Upon



1 determining that the offeror is qualified for the preference,
2 the procurement officer shall notify the administrator and the
3 administrator shall place the offeror on the Hawaii products
4 list.

5 (g) Solicitations shall contain a provision notifying
6 offerors who request application of the preference that in the
7 event of any change that materially alters the offeror's ability
8 to supply Hawaii products, the offeror shall immediately notify
9 the chief procurement officer in writing and the parties shall
10 enter into discussions for the purposes of revising the contract
11 or terminating the contract for convenience.

12 (h) Nothing in this section shall limit, restrict, or
13 preclude a Hawaii product from any preferences, set-asides, or
14 criteria that may be applied under section 103D-906, and this
15 section shall operate instead to mutually enhance the purpose of
16 this section and section 103D-906.

17 ~~[(f)]~~ (i) This section shall not apply whenever its
18 application will disqualify any governmental agency from
19 receiving federal funds or aid.

20 ~~[(g)]~~ (j) Any purchase made or any contract awarded or
21 executed in violation of this section shall be void and no



1 payment shall be made by any purchasing agency on account of the
2 purchase or contract.

3 ~~[(h)]~~ (k) For the purposes of this section, "soil
4 enhancement product" means any nonchemical soil preparation,
5 conditioner, or compost mixture designed to supplement aeration
6 or add organic, green waste, or decaying matter to the soil;
7 provided that the term does not include any plant fertilizer
8 intended to stimulate or induce plant growth through chemical
9 means. All state agencies shall include in their solicitations,
10 when required, the soil enhancement products identified on the
11 Hawaii products list pursuant to subsection (e)."

12 ~~PART III~~

13 ~~PROCUREMENT PROTESTS AND DISPUTES~~

14 ~~SECTION 7. Chapter 103D, Hawaii Revised Statutes, is~~
15 ~~amended by adding a new section to be appropriately designated~~
16 ~~and to read as follows:~~

17 ~~"§103D- Procurement statistics. The state procurement~~
18 ~~office shall keep statistics on solicitations and awards~~
19 ~~contested under section 103D-701 for the purpose of improving~~
20 ~~procurement procedures. The statistics shall include~~
21 ~~information on protests involving inadvertent errors."~~

